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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/570,483

03/01/2006

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

04/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/570,483	HARUKI ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/1/06, 3/19/07, 11/2/07, 2/19/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The current oath acknowledges the duty to disclose information which is material to the examination instead.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Specification

Drawings

2. The drawings are objected to because Figures 8 and 9 are not consistent with the description thereof on page 8, i.e. “when placed into a packaging bag”, i.e. where is the placement in the bag shown? In Figures 1, 3-4 and 8-11, the lines from 5, 6, 7, 8 and 17 should be dashed to denote underlying structure. In Figure 4, the sheet 21 should be denoted. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to

Art Unit: 3761

avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

3. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the abstract and page 1, lines 10-24.

4. The abstract of the disclosure is objected to because the abstract is too long, i.e. more than 150 words in length. Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate, see MPEP 608.01(d), i.e. where is the invention of claims 2-8 described. 2) The specification should include the proper section headings as provided in 37 CFR 1.77(b). 3) Throughout the application, i.e. including the claims, Applicants describe “identification information” as “including the size and the front or back side of the diaper main body, and *the like*” (emphasis added). It is unclear what such information as so described includes, e.g. information of size and information of side and information something like that? Information which imparts all three at once? What information is considered “and the like”? (Note page 13, first full paragraph, e.g. information imparts both size and side but not also something “like that”, and the paragraph bridging pages 20-21 and Figure 7, e.g. information which imparts size and separate information which imparts side but not also something “like that” too or separately). A clear, complete description of such terminology should be set forth. See also discussion *infra*. 4) What is 8c in Figure 6? 5) The description of Figures 8 and 9 on page 8 is inconsistent with the Figures and the description on, e.g., page 22, lines 13-14. A consistent description should be set forth throughout the application.

Appropriate correction is required.

Claim Objections

6. Claims 1-9 are objected to because of the following informalities: the claims are replete with informalities. For example, in claim 1, lines 3-11 include numerous grammatical errors. Also, on line 14, should “to become recognizable” be --to be visible--? In claim 9, line 4

Art Unit: 3761

appears to be missing a word or words. The claims should be carefully reviewed and revised, as necessary. Applicant is thanked in advance for his/her cooperation in placing the claims in proper form. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, as already discussed supra, the description of the identification information, i.e. what it includes at a minimum, is unclear. With regard to claim 6, since the terminology “attached” includes both direct or indirect attachment, the claimed lack of leg hole elastic member attachment is unclear, i.e. is Applicant trying to claim the lack of direct attachment only? In regard to claim 7, is Applicant claiming folding in addition to the folding of the main body when the front and back portions are joined, see, e.g., claim 2, and/or a packing bag, i.e. it is unclear what the minimum number of folds is being claimed and whether a bag is being claimed? In regard to claim 8, is the ink printing of the display part and identification information as claimed in claim 1 one and the same? In regard to claim 9, is the turn up line on lines 6-7 and the turning up on line 2 one and the same? On lines 8-9, is Applicant claiming cutting leg hole openings or just the sheet having positions for openings corresponding to leg hole sections, note second to last line of claim 9, i.e. terminology “openings” refers to structure not methodology. Finally, the step of the last step is unclear not only with regard to the identification information as discussed supra but as to what methodology, i.e. other than

intermittent printing by an ink jet system of such information on the outside of the sheet, is being required. See Claim Language Interpretation section infra.

Claim Language Interpretation

8. Claims 1-8 are product by process claims, see MPEP 2113, i.e. [E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Therefore, the end product of claim 1 is considered to be the portions and the absorbent body as claimed on lines 1-11 with an elasticized waist and leg holes, i.e. including elastic members, and, due to the lack of clarity discussed in paragraph 7 supra also, a display part with information identifying at least one of size or side at a minimum. it is noted that such does not require an actual size or the actual side be set forth. The end product of claim 2 is considered to be the display part being on the outside of a sheet which forms a portion connecting the front and rear portion and has a fold in the crotch portion. The end product of claims 3-5 is considered to be a display part positioned on both the front and back portions, at least the front portion and at least the back portion, respectively. It is noted that the longitudinal extents of the front, rear and crotch portions relative to the overall extent of the main body have not been set forth. The end product of claim 6, due to the lack of clarity discussed supra in paragraph 7 also, is considered to require leg hole elastic members which are not directly connected to some portion of the display

Art Unit: 3761

part in the longitudinal direction. The end product of claim 7, due to the lack of clarity discussed in paragraph 7 supra also, is considered to require a display part on the exterior of the main body which body is folded somehow and capable of being packaged as so folded. The end product of claim 8, due to the lack of clarity discussed in paragraph 7 supra also, is considered to require printing, i.e. ink, on the main body (It is noted that the dictionary defines “printed” as “lettering or other impressions produced in ink from type by a printing press or other means”). Due to the lack of clarity discussed supra in paragraph 7, claim 9 is considered to require a process as claimed in lines 1-4, feeding a sheet in a direction parallel to some fold line which sheet includes portions intended to define sheets of separate articles which portions are also feed in a direction parallel to such fold line, the sheet also having positions corresponding to leg hole sections, i.e. cutting is not required and intermittent printing of identification information, see discussion of claim 1 supra, on the exterior of the sheet by an ink jet system. (It is noted that the terminology “in a vicinity”, absent specific claiming of dimensions, is considered relative).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cammorata et al. ‘162.

Claim 1: See the Claim Language Interpretation section *supra*, hereinafter referred to as CLI, and '162 at the Figures, esp. Figure 2, and, e.g., paragraphs 6, 9, 14, 21, 30, 36, 48, 56, 68-73, 76, i.e. '162 teaches a pants-type disposable diaper 20 comprising a diaper main body 32, 20 having a front abdomen portion 22, a back portion 24, and leg hole sections 52 which are formed on both sides of a crotch portion 26 between the portions, and further having a waist opening 50 which is formed by joining each side edge of the front abdomen portion to a corresponding side edges of the back portion, see paragraph 71, the crotch portion provided with an absorbent main body 44, waist elastic members attached in an expanded state in a diaper width direction to parts of the front abdomen portion and to parts of the back portion, both of which parts correspond to the waist opening, see paragraph 73 and CLI, each of the leg hole sections provided with a leg-hole elastic member which is attached in an expanded state along each of the leg holes, see paragraph 73 and CLI, and the diaper main body provided with a display part, see Figure 2 between 70 and 74, which displays graphics/information, e.g. 60-68. Claim 1 further requires information which identifies "a size and a front or back side of the diaper main body and the like", see CLI *supra*, and such allowing the display part to become recognizable from a side position of each of diaper main bodies, when at least two diaper main bodies are stacked on one another, with the front abdomen portion of one diaper main body overlapped with the back portion of another diaper main body, i.e. the capability, function or property of such information. However, see the graphics of Figure 2, the front end includes a graphic as seen from the front thereof and the back end includes the same graphic as seen from the back thereof. Additionally a graphic 66 is shown in the crotch section adjacent the fold line and more towards the front than in the rear. Furthermore, the graphic on the crotch and the graphic on one side would be visible

Art Unit: 3761

when the side opposite the one side is visually obstructed and lack of a graphic and the graphic of the opposite side would be visible when the one side is visually obstructed. Therefore, as best understood, there is sufficient factual evidence for one to conclude that such same structure, i.e. graphics/information, at the very least, inherently include the same function, capability and property, i.e. identifies the side and would allow the display part to become recognizable from a side position, when at least another diaper main body is stacked thereon, e.g. with the front abdomen portion of one diaper main body overlapped with the back portion of another diaper main body, see MPEP 2112.01.

Claim 2: The diaper main body 32, 20 is formed by turning up a sheet, e.g. cover 40, connecting the front abdomen portion to the back portion at a position corresponding to the crotch portion, and the display part is located on an outside part of the turned-up sheet, see CLI and Figures 1-2 and paragraph 106.

Claims 3-5: The display part is positioned on the front abdomen portion and/or the back portion, see, e.g., Figures 1-2 and CLI.

Claim 6: Elastic members for leg holes are not directly attached to a part corresponding to a formation position of the display part in a length direction of the diaper main body, see, e.g. CLI, Figures 1-2 and paragraph 73.

Claim 7: The display part is formed on the folded outside part of the diaper main body which has been folded, see Figures 1 and 2 and discussion of claim 2. This claim also requires such structure to be capable of placement into a packaging bag, see CLI. However, at the very least, the '162 device includes all the claimed structure as best understood. Therefore, as best understood, there is sufficient factual evidence for one to conclude that such same structure at the

Art Unit: 3761

very least inherently includes the same function, capability and property, i.e. capable of placement into a packaging bag, see MPEP 2112.01.

Claim 8: The display part is printed on the diaper main body by means of an ink-jet system, see CLI supra and, e.g., paragraphs 30, 36 and 48, i.e. ink/print.

Claim Rejections - 35 USC § 102/103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 9 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Oji JP '266.

Claim 9: See CLI and '266 at abstract, e.g. "article having...sheets", "outer sheets" "applied to the article", "by ink jet printing", Figure 1, note the orientation of 7 relative to the crotch fold line and leg openings 2 and seams 6, Figure 3, elements 7 and 9 and Figure 6, note the orientation of 7 relative to the direction of travel and the second graphic, and the translation at claim 2, page 4, paragraphs 11 and 14, pages 7-11, i.e. '266 teaches a process of producing a pants-type disposal diaper in which a diaper main body is formed by turning up a sheet constituting a front abdomen portion and a back portion at a position corresponding to a crotch portion, see Figures. Also as best determinable from the translation and the claim as best understood, see CLI, '266 either teaches or obviously teaches/suggests the claimed process, i.e. see Figures and orientation of graphics in the end product and Figures 5-6, i.e. a continuous sheet

Art Unit: 3761

composed of portions intended to define at least the two sheets of separate articles, see the sheet in Figure 6 and the side by side graphics, which are joined to each other in parallel to a turn-up line thereof, see the crotch fold line in Figure 1, feeding such sheet, and thereby the portions, in a direction parallel to the turn-up line thereof, i.e. see arrow in Figure 6 relative to the graphic and the graphic 7 relative to the crotch fold line in Figure 1, positions corresponding to leg-hole sections of the continuous sheet, i.e. see graphic 7 in Figure 1 relative to 2 formed by edges and graphic relative to sheet in Figure 6, and intermittently printing identification information, e.g., including a size of the diaper main body, see portions of translation cited, on the sheet side which is the outer side of the main body, see Figure 3. It is noted that the graphic 7 in Figure 1 is considered to be “in the vicinity of the fold line” absent claiming of specific dimension relative to such.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art, e.g. JP '786, Klemp '579, Stenberg '579, Machida '778, of good date also teach diapers with identification information as claimed.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

March 27, 2008